

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re: Lehman Brothers Holdings Inc., et al  
  
Debtors.

Case No.: 08-13555 (SCC)  
Chapter 11

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Lehman Brothers Holdings Inc.  
  
Plaintiff,  
  
v.

Adversary Proceeding  
No.:16-01019 (SCC)

First Advantage Mortgage, L.L.C., *et al*,  
  
Defendant.

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Lehman Brothers Holdings Inc.  
  
Plaintiff,  
  
v.

Adversary Proceeding  
No.:16-01366 (SCC)

Guaranty Bank, FSB,  
  
Defendant.

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**NOTICE OF SUBSTITUTION OF PARTY**

TO THE HONORABLE COURT, PARTIES AND ATTORNEYS OF RECORD:

NOW COMES the Federal Deposit Insurance Corporation ("FDIC"), as Receiver for Guaranty Bank, through its undersigned counsel, and respectfully gives notice of the following:

1. On or about February 3, 2016, this action was commenced when the Plaintiff, Lehman Brothers Holdings Inc., filed in this Court an Adversary Complaint naming Guaranty Bank, FSB ("Guaranty"), as a Defendant; Adversary Proceeding No. 16-01019 (SCC).

2. On or about December 29, 2016, Plaintiff, Lehman Brothers Holdings Inc., filed in this Court a Second Amended Adversary Complaint against Guaranty; Adversary Proceeding No. 16-01366 (SCC).

3. On May 5, 2017, while these actions were still being actively litigated, Guaranty was closed by the Office of the Comptroller of the Currency and the FDIC was appointed Guaranty's Receiver. Attached as **Exhibit A** is a copy of the Order Appointing the FDIC as Receiver.

4. By operation of federal law, the FDIC, in its capacity as Receiver, succeeded to all of Guaranty's rights, titles, powers, privileges, assets, and liabilities, including Guaranty's status as a Defendant in these actions. See 12 U.S.C. §§ 1821(d)(2)(A) and 1821(d)(2)(B); *see also, O'Melveny & Meyers v. FDIC*, 114 S.Ct. 2048, 2054 (1994) (holding that, under the language of § 1821(d)(2)(A), the FDIC "steps into the shoes" of the failed institution).

WHEREFORE, in accordance with the foregoing, the FDIC, as Receiver for Guaranty notifies this Honorable Court, the parties, and attorneys of record, that on this date it hereby substitutes into the place of Guaranty as a Defendant in these cases, and requests that henceforth the case caption designation for Guaranty Bank be changed to: Federal Deposit Insurance Corporation, as Receiver for Guaranty Bank.

Dated this 2<sup>nd</sup> day of June, 2017.

**FEDERAL DEPOSIT INSURANCE CORPORATION**

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**UNITED STATES OF AMERICA  
OFFICE OF THE COMPTROLLER OF THE CURRENCY  
WASHINGTON, D.C.**

**Receivership Determination and Appointment of Receiver**

**Guaranty Bank  
Glendale, Wisconsin  
Charter Number 717936**

**WHEREAS**, the Comptroller of the Currency has delegated to me the authority to appoint a receiver for a Federal savings association under 12 U.S.C. §§ 1464(d)(2) and 1821(c)(5);

**WHEREAS**, Guaranty Bank, Glendale, Wisconsin ("Bank") is insured by the Federal Deposit Insurance Corporation;

**WHEREAS**, from information available to the Office of the Comptroller of the Currency ("OCC") and pursuant to 12 U.S.C. § 1464(d)(2), I have determined that the following grounds exist for the appointment of a receiver for the Bank:

1. The Bank has experienced substantial dissipation of assets or earnings due to any unsafe or unsound practice. 12 U.S.C. § 1821(c)(5)(B)(ii).
2. The Bank is in an unsafe or unsound condition to transact business. 12 U.S.C. § 1821(c)(5)(C).
3. The Bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the Bank to become adequately capitalized (as defined in 12 U.S.C. § 1831o(b)) without Federal assistance. 12 U.S.C. § 1821(c)(5)(G).
4. The Bank's unsafe or unsound practices or conditions are likely to cause substantial dissipation of assets or earnings. 12 U.S.C. § 1821(c)(5)(H)(i).
5. The Bank's unsafe or unsound practices or conditions are likely to weaken the Bank's condition. 12 U.S.C. § 1821(c)(5)(H)(ii).
6. The Bank's unsafe or unsound practices or conditions are likely to otherwise seriously prejudice the interests of the institution's depositors or the Deposit Insurance Fund. 12 U.S.C. § 1821(c)(5)(H)(iii).



7. The Bank is undercapitalized (as defined in 12 U.S.C. § 1831o(b)), and has no reasonable prospect of becoming adequately capitalized (as defined in that section). 12 U.S.C. § 1821(c)(5)(K)(i).
8. The Bank is undercapitalized (as defined in 12 U.S.C. § 1831o(b)), and has failed to submit a capital restoration plan acceptable to the appropriate Federal banking agency within the time prescribed under 12 U.S.C. § 1831o(e)(2)(D). 12 U.S.C. § 1821(c)(5)(K)(iii).

**WHEREAS**, in my discretion, I have determined that the Federal Deposit Insurance Corporation should be appointed Receiver for the Bank;

**NOW THEREFORE**, pursuant to 12 U.S.C. §§ 1464(d)(2) and 1821(c) and the power, duty, and authority vested in me by law, I do hereby appoint the Federal Deposit Insurance Corporation as Receiver for the Bank, with all of the powers, duties, and responsibilities given to or imposed upon a receiver under the provisions of the laws of the United States that authorize and direct the appointment of such receiver.

  
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Coney M. Bland  
Senior Deputy Comptroller  
Midsize and Community Bank Supervision

Dated: May 5, 2017